

03-25294

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33617-DDO
Chapter 7

Mathew Prettyman,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. State Street Bank and Trust Company, by Washington Mutual Bank, FA, its authorized servicer, moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 22, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 N. Robert St., in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than September 17, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than September 13, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 18, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. By mortgage dated October 8, 2001, in the original principal amount of \$535,000.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. T131971, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lots 12,13 and the North Half of Lot 14, Maplewood Townsite, Scott County, Minnesota, according to the plat thereof on file and of record in the Office of the County Recorder in and for said County and State, That part of the platted roadway in the plat of Maplewood Townsite, Scott County, Minnesota lying northwesterly of the following described line: Beginning at the southwest corner of Lot 8, of said plat; thence southwesterly to the southerly corner of Lot 12, of said plat and there terminating, and lying southwesterly of the northeasterly lot line of Lot 12, extended southeasterly to the last above described line and there terminating. That part of Government Lot 3, Section 3, Township 114, Range 22, Scott County, Minnesota described as follows: Beginning at the most northerly corner of Lot 12, Maplewood Townsite, according to the recorded plat thereof thence northwesterly along the northwesterly extension of the northeasterly line of said lot 12 to the shoreline of Prior lake; thence southwesterly along said shoreline to the intersection with the westerly extension of the south line of the North Half of Lot 14, said Maplewood Townsite; thence easterly along said westerly extension to the westerly line of said Lot 14; thence northerly along the westerly line of Lots 14, 13 and 12 to the point of beginning, Scott County, Minnesota.

The Mortgage was registered in the offices of the Registrar of Titles, for Scott County, Minnesota on October 23, 2001, as Document No. T123500. A copy of the Mortgage and assignments are attached hereto as Exhibit A.

Washington Mutual Bank, FA is the servicer for said Note and Mortgage and is authorized to act on behalf of Movant.

7. The last payment received from Debtor was applied to the June, 2003 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

14 payments @ \$4,525.02	\$63,350.28
Accrued late charges	2,355.36
Property Inspection	117.90
Prior attorney fees and costs (bky)	1,821.52
Escrow shortage	63.71
Attorneys Fees & Cost	<u>900.00</u>
TOTAL	\$68,608.77

The outstanding principal balance due Movant under the terms of the note is \$525,634.05 as of July 7, 2004, and interest accrues at the rate of \$115.20 per day. On information and belief, the Property is also encumbered by a first mortgage in favor of Vermillion State Bank approximate amount of \$350,000.00 and a third mortgage in favor of Vermillion State Bank in the approximate amount of \$65,000.00. The amount therefore due and owing on said note is as follows:

Principal	\$525,634.05
Late charges	2,355.36
Escrow shortgage	63.71
Property Inspections	117.90
Interest to 8/31/04	52,761.60
Prior atty fees and costs (bky)	1,821.52
Attorneys Fees & Costs	<u>900.00</u>
TOTAL	\$583,654.14

The fair market value of the Property as averred by the debtor is approximately \$765,000.00.

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 8.20.04.

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.

Nancy A. Nordmeyer-121356

Lawrence P. Zielke 152559

Attorney for Movant

7300 Metro Boulevard #390

Edina, MN 55439-2306

(952) 831-4060

VERIFICATION

I, Cheryl Gardner, the Bankruptcy Specialist for State Street Bank and Trust Company, by Washington Mutual Bank, FA, its authorized servicer, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 18, 2011 Signed: Cheryl Gardner

State Street Bank & Trust Company
c/o Washington Mutual Bank, FA
11200 West Parkland Ave
Milwaukee, WI 53224

LOAN NO. 21616/7096

NOTE

OCTOBER 8 . 2001
[Date]

ST. LOUIS PARK
[City]
3442 SYCAMORE TRAIL SW
PRIOR LAKE, MN 55372
[Property Address]

MN
[State]



1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 535,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is
FIRST REPUBLIC MORTGAGE CORPORATION,

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.000 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on DECEMBER 1, 2001. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on NOVEMBER 1, 2031, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
500 FORD ROAD, SUITE 200, ST. LOUIS PARK, MN 55426

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 3,925.64.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7297696

2/27/02

52449981
0052449881

Registration tax of \$ 1230.50 paid
Treasurer's Receipt No. 132068
Conservation Fee Paid

James Aug County Auditor

Doc. No. T123500
Vol. 74 Page 254 Cert 25050

OFFICE OF THE REGISTRAR OF TITLES
SCOTT COUNTY, MINNESOTA

Certified Filed on
10-23-2001 at 08:10 ☒ AM ☐ PM

Pat Boeckman, Registrar of Titles
by *[Signature]* Deputy Fee: \$20.50 ⁰¹

(Space Above This Line For Recording Data)

Loan No. 21616/7497096

MORTGAGE

Return To:

☒ FIRST REPUBLIC MORTGAGE CORPORATION
500 FORD ROAD, SUITE 200
ST. LOUIS PARK, MN 55426

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **OCTOBER 8, 2001** together with all Riders to this document.

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

Initials:

[Signature] B.A.P.

7497096

0052449881

Doc. No. T123501

Vol. 74 Page 254 Cert. 25050

OFFICE OF THE REGISTRAR OF TITLES
SCOTT COUNTY, MINNESOTA

Certified Filed on

10-23-2001 at 08:10 [11AM] []PM

Pat Boeckman, Registrar of Titles

by De Deputy Fee: \$19.50 ⁰¹

Loan No.: 21616/7497096

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Assignment of Real Estate Mortgage / Deed of Trust

FOR VALUE RECEIVED, the undersigned ("Assignor") hereby sells, transfers and assigns to

OHIO SAVINGS BANK
1801 EAST 9TH STREET #200
CLEVELAND, OH 44114
1-888321-6446

("Assignee")

all of Assignor's right, title and interest in and to that certain Mortgage dated OCTOBER 8, 2001
executed by **MATHEW R. PRETTYMAN AND BARBARA A. PRETTYMAN, HUSBAND AND WIFE**
as mortgagor,to **FIRST REPUBLIC MORTGAGE CORPORATION**

as mortgagee,

and recorded concurrently herewith as Document Number **123500** filed on **OCT 23 2001**
(or in Book Page), in the official Records
either the County Recorder or the Registrar of Titles, as the case may be, of **SCOTT** County.
State of **MINNESOTA**, describing land therein as:**LEE ATTACHED LEGAL**Commonly known as: **3442 SYCAMORE TRAIL SW**
PRIOR LAKE, MN 55372TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon
with interest, and all other rights accrued or to accrue under said Mortgage.STATE OF **MINNESOTA**
COUNTY OF HennepinOn **OCTOBER 8, 2001** before me, the
undersigned, a Notary Public in and for said County and State,
personally appeared **LAURI GRAVES**
known to me to be the **ASST. SECRETARY**and
known to me to be the
Of the corporation herein which executed the within
instrument, that the seal affixed to said instrument is the
corporate seal of said corporation, that said instrument was
signed and sealed on behalf of said corporation pursuant to its
by-laws or a resolution of its Board of Directors and that
he/she acknowledges said instrument to be the free, act and
deed of said corporation.WITNESS my hand and official seal. Hennepin County.Signature M. Susan LeGrand
My Commission ExpiresDate of Execution: **OCTOBER 8, 2001****FIRST REPUBLIC MORTGAGE CORPORATION**By: Lauri Graves
LAURI GRAVES
As: **ASST. SECRETARY**By:
As:Drafted by:
X First Republic Mortgage Corporation
500 Ford Road, Suite 200
St. Louis Park, MN 55426

(This area for official notarial seal)

760664

005249881

Doc. No. T131971

Vol. 74 Page 254 Cert. 25050

OFFICE OF THE REGISTRAR OF TITLES
SCOTT COUNTY, MINNESOTA

Certified Filed on 07-16-2002 at 08:10

Pat Boeckman, Registrar of Titles

Fee: \$20.00

58449881

ASSIGNMENT of MORTGAGE**PREPARED BY: SMI
RECORDING REQUESTED BY
/AFTER RECORDING RETURN TO:**Stewart Mortgage Information
Attn. Sherry Doza
P.O. Box 540617
Houston, Texas 77254-0617
Tel. (800) 795-5263This instrument was drafted by:
Stewart Mortgage Information Co
Sherry Doza
3910 Kirby Drive, Suite 300
Houston, Texas 77098Pool: 0 Index:
Loan Number: 7497096

110_2201

**STATE OF MINNESOTA
COUNTY OF SCOTT****KNOW ALL MEN BY THESE PRESENTS:**

That OHIO SAVINGS BANK, a Federal Savings Bank, Formerly known as Ohio Savings Bank, FSB ('Assignor'), acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note executed by MATHEW R. PRETTYMAN AND BARBARA A. PRETTYMAN ('Borrower(s)') secured by a Mortgage therewith executed by Borrower(s) for the benefit of the holder of the said note, which Mortgage was recorded on the lot(s), or parcel(s) of land described therein situated and recorded in the County of Scott, State of Minnesota:

Recording Ref: Document No. T123500

For and in consideration of the sum of Ten and No/100 dollars (\$10.00), and other good valuable and sufficient consideration paid, the receipt of which is hereby acknowledged, does hereby transfer and assign, set over and deliver unto STATE STREET BANK AND TRUST COMPANY, as custodian/trustee (Assignee), all beneficial interest in and to title to said Mortgage, together with the note and all other liens against said property securing the payment thereof, and all title held by the undersigned in and to said land.

TO HAVE AND TO HOLD unto said Assignee said above described Mortgage and note, together with all and singular the liens, rights, equities, title and estate in said real estate therein described securing the payment thereof, or otherwise.

Executed this the 3rd day of July A.D. 2002.

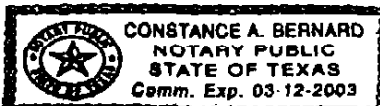
OHIO SAVINGS BANK, a Federal Savings Bank,
Formerly known as Ohio Savings Bank, FSBBy: Sherry Doza
SHERRY DOZA,
AUTHORIZED AGENT

12, 13 & 14/014

Maplewood
25-028**THE STATE OF TEXAS
COUNTY OF HARRIS**

On this the 3rd day of July A.D. 2002, before me, a Notary Public, appeared SHERRY DOZA to me personally known, who being by me duly sworn, did say that (s)he is the AUTHORIZED AGENT of OHIO SAVINGS BANK, a Federal Savings Bank, Formerly known as Ohio Savings Bank, FSB, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said SHERRY DOZA acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Assignee's Address:
225 FRANKLIN ST. MCO
BOSTON, MA 02110Assignor's Address:
1801 EAST NINTH STREET, SUITE 200
CLEVELAND, OH 44114

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33617-DDO

Chapter 7

Mathew Prettyman,

Debtor(s)

MEMORANDUM OF LAW

State Street Bank and Trust Company, by Washington Mutual Bank, FA, its authorized servicer ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed Debtor(s) has made no payments to Movant and as of this date thereof are in arrears in the total amount of \$68,608.77.

ARGUMENT

1. Under Section 362.(d) (1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case has failed to make the payments required by the note and mortgage for a period of more than 13 months. Debtor(s) has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) has no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$583,654.14. [The property is encumbered by a first mortgage in favor of Vermillion State Bank in the approximate amount of \$350,000.00 and a third mortgage in favor of Vermillion State Bank in the approximate amount of \$65,000.00.] The fair market value of the property is approximately \$765,000.00.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

8.20.01

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By /e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on August 23, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

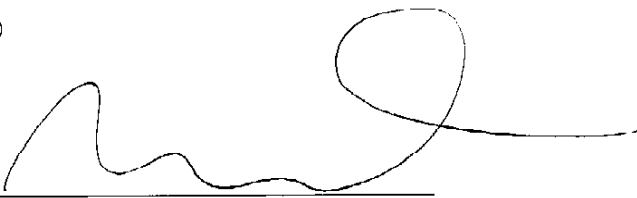
Mathew Prettyman
3442 Sycamore Trail SW
Prior Lake, MN 55372

William Selman, Esq.
301 4th Ave South STE 377
Minneapolis, MN 55415

Patti Sullivan, Trustee
PO Box 16406
St. Paul, MN 55116


U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

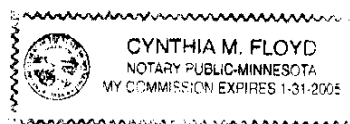
Vermillion State Bank
C/O Stein and Moore
332 Minnesota Street STE W1650
St. Paul, MN 55101



Stephanie Pilegaard

Subscribed and sworn to before me August 23, 2004.



Notary

03-25294
52449881

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33617-DDO

Mathew Prettyman,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 22, 2004.

THIS CAUSE coming to be heard on the motion of State Street Bank and Trust Company, by Washington Mutual Bank, FA, its authorized servicer, a creditor in the proceeding, the Court having jurisdiction. due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED, that the automatic stay heretofore entered in this case is modified to the extent necessary to allow State Street Bank and Trust Company, by Washington Mutual Bank, FA, its authorized servicer, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lots 12, 13 and the North Half of Lot 14, Maplewood Townsite, Scott County, Minnesota, according to the plat thereof on file and of record in the Office of the County Recorder in and for said County and State. That part of the platted roadway in the plat of Maplewood Townsite, Scott County, Minnesota lying northwesterly of the following described line: Beginning at the southwest corner of Lot 8, of said plat; thence southwesterly to the southerly corner of Lot 12, of said plat and there terminating, and lying southwesterly of the northeasterly lot line of Lot 12, extended southeasterly to the last above described line and there terminating. That part of Government Lot 3, Section 3, Township 114, Range 22, Scott County, Minnesota described as follows: Beginning at the most northerly corner of Lot 12, Maplewood Townsite, according to the recorded plat thereof thence northwesterly along the northwesterly extension of the northeasterly line of said lot 12 to the shoreline of Prior lake; thence southwesterly along said shoreline to the intersection with the westerly extension of the south line of the North Half of Lot 14, said Maplewood Townsite; thence easterly along said westerly extension to the westerly line of said Lot 14; thence northerly along the westerly line of Lots 14, 13 and 12 to the point of beginning, Scott County, Minnesota

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a) (3), this order is effective immediately.

Dated: _____.

United States Bankruptcy Judge